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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOANNA LANG, individually and as
9 personal representative of the Estate of
10 Dick Lang, wife and husband and marital
11 community, and as guardian and parent of
12 the minor children R.L. and C.L.,

13 Plaintiff,

14 v.

15 CHERYL STRANGE; DAVID
16 STILLMAN; DANA PHELPS; TERRY
17 REDMON; JANE AND JOHN DOES 1
18 THROUGH 10; CLARK COUNTY; CITY
19 OF VANCOUVER; JON PFISTER;
20 OFFICER GOUDSCHALL; JOHN and
21 JANE DOE POLICE OFFICERS 1 – 10, *et*
22 *al.*, COWLITZ COUNTY, CITY OF
23 KELSO; TROY BRIGHTBILL, DEPUTY
24 J HAMMER; DAN HSIEH, EIMIKO
MURLIN and JEFF IAN MURLIN;
STEVE VALLEMBOIS and JIMMY
HOWARD; LEGACY SALMON CREEK
HOSPITAL; KIMBERLY COPELAND,
M.D.; BETH KUTZERA; PAMELA
WILLIAMS; KAYTENA GONZALEZ;
JANELLE REDMOND; JENNIFER L.
WHITE; SARAH COSLOW; J. AARON
MERINO; JAIMEE SCHEFFLER;
LORAIN MARTINEZ; COURT
APPOINTED SPECIAL ADVOCATES;
KATHY SHIRILLA;

Defendants.

CASE NO. 3:21-cv-05286-RJB

ORDER DENYING AS MOOT
DEFENDANT'S MOTION TO
DISMISS

1 THIS MATTER comes before the Court on Dr. Kimberly Copeland, M.D.'s Motion to
2 Dismiss Under FRCP 12(b)(6). Dkt. 13. The Court has considered the pleadings filed regarding
3 the motion and the remaining file. The motion should be deemed moot because Plaintiff filed an
4 amended complaint as a matter of course after Dr. Copeland filed the motion to dismiss.

5 I. BACKGROUND

6 On March 12, 2021, Plaintiff, Joanna Lang, filed her original complaint in state court.
7 Dkt. 4. The original complaint referenced Dr. Copeland, but it did not name her as a defendant.
8 *Id.* On April 14, 2021, Plaintiff served Dr. Copeland with a summons and the original
9 complaint. Dkt. 7-11.

10 On April 21, 2021, defendant City of Vancouver removed this matter to federal court
11 based on federal question jurisdiction. Dkt. 1.

12 On May 4, 2021, Dr. Copeland filed the pending motion to dismiss pursuant to Federal
13 Rule of Civil Procedure 12(b)(6) "out of an abundance of caution." Dkt. 20. Fourteen days
14 later, on May 18, 2021, Plaintiff filed an amended complaint, which names Dr. Copeland as a
15 defendant and specifics the claims against her. Dkt. 14.

16 II. DISCUSSION

17 Pursuant to Federal Rule of Civil Procedure 15(a):

- 18 (1) A party may amend its pleading once as a matter of course within:
19 (A) 21 days after serving it, or
20 (B) If the pleading is one to which a responsive pleading is required, 21
21 days after service of a responsive pleading or 21 days after service of a
22 motion under Rule 12(b), (e), or (f), whichever is earlier.

23 Meaning that, under Rule 15(a)(1)(B), a plaintiff may file an amended complaint once as
24 a matter of course within 21 days of service of a motion to dismiss made under Rule 12(b). *Id.*;
see e.g., Ramirez v. Cnty. of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015).

1 Plaintiff filed the amended complaint fourteen days after Dr. Copeland filed the pending
2 motion to dismiss under Rule 12(b)(6). Therefore, Plaintiff appears to have properly amended as
3 a matter of course within 21 days.


4 “[A]n amended complaint supersedes the original, the latter being treated thereafter as
5 non-existent.” *Ramirez*, 806 F.3d at 1008 (internal quotation omitted). Because Dr. Copeland
6 moved to dismiss the original complaint, which “no longer performs any function,” her motion
7 should be denied as moot. *See id.*; *see also Barnes v. Dist. of Columbia*, 42 F.Supp.3d 111, 117
8 (D.D.C. 2014) (“When a plaintiff files an amended complaint as of right within 21 days after the
9 filing of the motion to dismiss under Rule 12(b), (e), or (f), the amended complaint becomes the
10 operative pleading . . . and any pending motion to dismiss becomes moot[.]”)

11 Therefore, Dr. Kimberly Copeland, M.D.’s Motion to Dismiss Under FRCP 12(b)(6)
12 (Dkt. 13) **is denied as moot.**

13 **IT IS SO ORDERED.**

14 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
15 to any party appearing *pro se* at said party’s last known address.

16 Dated this 8th day of June, 2021.

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18 ROBERT J. BRYAN
19 United States District Judge
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